

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ERR-244

DECISION

Application:	Validation of Multifamily Rental License M-504 Issued in Error
Applicant:	AG TDG Pinewood, LLC.
Opposition:	None
Hearing Date:	March 4, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-244 is a request for validation of Prince George's County Multifamily Rental License No. M-504. The license was issued in error on May 27, 2013 for Andrews Ridge Apartments (formerly Pinewood Chase Apartments, Section 1) located at 5601, 5603, 5605, 5607, 5609, 5611, 5613, 5615, 5617, 5619, 5621, 5623, 5625, 5627, 5629, 5631 and 5633 Regency Park Court, Suitland, Maryland.
- (2) The subject property consists of 17 buildings spread across 11.06 acres in the R-18 (Multifamily Medium Density Residential) Zone. It includes a total of 242 apartment units.
- (3) No one appeared in opposition at the hearing held by this Examiner. At the close of the hearing the record was left open to allow Applicant to submit some photographs. These items were received on April 10, 2015 and the record was closed at that time. (Exhibits 18(a)-(g))

FINDINGS OF FACT

- (1) The Apartment Buildings were constructed in 1965. Applicant purchased them on May 26, 2011. At the time of purchase the apartment complex had been certified as a nonconforming use with 241 units. Applicant applied for a new Multifamily Rental License and it was issued for 242 units. (Exhibit 8(e)) Research revealed that multifamily rental licenses had been issued for 242 units at the site since 1970. (Exhibits 8(a)-(g) and 9(a)-(p)) The most recent rental license was issued on May 27, 2013 and will expire on May 27, 2015. (Exhibit 8(g)) This is the license that Applicant is seeking to certify as issued in error.

(2) At the time of purchase Applicant realized that one of the dwelling units had been used as a business/rental office and 241 units were being leased. (T. 8) Subsequent to purchase, Applicant constructed a business/fitness/leasing center, and believed it could administratively convert the old business/rental office back into a 3 bedroom, 2 bath leasable unit.¹ (T.8, 18, and 19)

(3) Applicant became aware of the need for the instant Application when it applied for a Use and Occupancy Permit (354-2015-00, which is pending). The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of that application.

This apartment project was constructed in 1965 pursuant to building permit 9/49 -48/65. The project consists of 242 dwelling units. Based on a lot size of 11.0692 acres (482,174.35 square feet), the project has a density of 21.8 dwelling units per acre. This exceeds the current maximum density allowed in the R-18 Zone, which is 12 dwelling units per acre for buildings 36 feet in height or less. The density requirement at the time of construction in 1965 was 2,000 square feet of lot area per dwelling unit. Based on the lot size of 482,174.35 square feet, only 241 dwelling units would have been permitted. A copy of the building permit site plan in our records indicates that 241 dwelling units were approved. Since the apartment project did not comply with the density requirement in effect at the time of construction, it does not qualify for nonconforming use certification. There is no record of any previously issued use and occupancy permit for the apartments per the Department of Environmental Resources. If the project has been issued an Apartment License by Prince George's County for 242 dwelling units, Validation of Apartment License Issued in Error may be pursued in accordance with Section 27-258 pf the Prince George's County Zoning Ordinance....

(Exhibit 4)

(4) After purchase, Applicant expended approximately \$378,000 to construct the community/fitness/business center. (Exhibit 17; T.3) It expended over \$6,000 to renovate the former business center in order to convert it back into an apartment unit. (Exhibits 14, 15 and 16; T. 8-10)

(5) The property appears to be well maintained. (Exhibit 18(b)) It is surrounded by townhouses, a church and other apartment communities. (T. 14)

(6) Applicant's witness testified that no fraud or misrepresentation was practiced in obtaining the Multifamily License and that at the time of its issuance no appeal or controversy regarding its issuance was pending. (T. 10)

¹ This conversion did not necessitate any change in size to the unit. The District Council allowed the construction of the business/fitness/leasing center upon its approval of DSP-12051. (Exhibit 7)

LAW APPLICABLE

(1) A Use and Occupancy Permit or an Apartment License may be validated as issued in error in accordance with Section 27-258 of the Zoning Ordinance, which provides, in pertinent part, as follows:

(a) **Authorization.**

(1) A building, use and occupancy, or absent a use and occupancy permit, a valid apartment license, or sign permit issued in error may be validated by the District Council in accordance with this Section.

* * * * *

(g) **Criteria for approval.**

(1) The District Council shall only approve the application if:

(A) No fraud or misrepresentation had been practiced in obtaining the permit;

(B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;

(C) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and

(D) The validation will not be against the public interest.

(h) **Status as a nonconforming use.**

(1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a nonconforming building or structure, or a certified nonconforming use, unless otherwise specified by the Council when it validates the permit. The nonconforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of Division 6 of this Part.

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CONCLUSIONS OF LAW

(1) The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The 242-unit Apartments were most recently approved by Prince George's County upon its issuance of rental license M-504 in 2013.

(2) The record reveals that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License. The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this License. There is no evidence that there

was any appeal or controversy regarding the issuance of the Multifamily Rental License. Thus, the validation will not be against the public interest as the instant Application merely validates a use that has existed on the subject property for 50 years.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-504 and declare it to be a Certified Non-Conforming Use, in accordance with the Site Plan. (Exhibit 10)